

State of Utah
Administrative Rule Analysis

NOTICE OF CHANGE IN PROPOSED RULE

The agency identified below in box 1 provides notice of proposed rule change pursuant to *Utah Code* Sections 63-46a-4. Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
Utah Admin. Code ref. (R no.):	R156-63b	Time filed:	
Changed to Admin. Code Ref. (R no.):			

1.	Agency:	Commerce/Division of Occupational and Professional Licensing		
	Room no.:			
	Building:	Heber M. Wells Building		
	Street address 1:	160 East 300 South		
	Street address 2:			
	City, state, zip:	Salt Lake City UT 84111-2316		
	Mailing address 1:	PO Box 146741		
	Mailing address 2:			
	City, state, zip:	Salt Lake City UT 84114-6741		
	Contact person(s):			
	Name:	Phone:	Fax:	E-mail:
	Clyde Ormond	801-530-6254	801-530-6511	cormond@utah.gov

(Interested persons may inspect this administrative rule at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)

2.	Title of rule or section (catchline):
	Security Personnel Licensing Act Armored Car Rule
3.	Type of notice: Change in Proposed Rule
	Changes original proposed rule file no.: 31701
4.	Purpose of the rule or reason for the change:
	As a result of a public hearing, further review by the Division and Board and comments submitted from Hunter Finch, various changes are being made to correct inadvertent and typographical errors in the proposed rule. Also a change is being made in Section 606 with respect to security badges.
5.	This change is a response to comments from the Administrative Rules Review Committee.
	Yes ___; No XX
6.	Summary of the rule change:
	Throughout the rule, the term "care" has been replaced with "car" and the term "contract security" has been replaced with "armored car" where applicable. Section 302e: deleted that liability insurance should cover false arrest and invasion of privacy as these should not be an issue for armored car companies. Section 304, paragraph (4): updated the reference to the Armored Car Industry Reciprocity Act. In Section 606 with respect to security badges, the requirement that a security badge contain the name of the armored car company and a number is being deleted. Section 612: updated the title of the section.
7.	Aggregate anticipated cost or savings to:
	A) State budget:

	No additional costs or savings are anticipated beyond those previously identified in the original proposed rule filing.													
	B) Local government:													
	This change in proposed rule does not apply to local governments; therefore, no costs or savings are anticipated. This change in proposed rule only applies to applicants for licensure as an armored car company or an armored car security officer.													
	C) Small businesses (fewer than 50 employees) AND persons other than businesses:													
	This change in proposed rule only applies to applicants for licensure as an armored car company or an armored car security officer, which some may qualify as a "small business". The Division anticipates a savings to armored car companies, which may qualified as a small business, of approximately \$60 per badge ordered for each security officer due to the fact that the name of the armored car company and a number will no longer be required. The Division is unable to determine how many badges an armored car company may order in a year.													
8.	Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization or any character other than an agency): No additional compliance costs are anticipated as a result of this change in proposed rule beyond those previously identified in the original proposed rule filing. Only savings are anticipated to armored car companies as a result of the additional amendments as identified above.													
9.	Comments by the department head on the fiscal impact the rule may have on businesses: This change to proposed rule corrects clerical errors and removes requirements inadvertently entered in the original filing (insurance coverage for false arrest and invasion of privacy; badges with names of armored car company and number). No fiscal impact to businesses is anticipated from these corrections. Francine A. Giani, Executive Director													
10.	This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required): Section 58-63-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)													
11.	This rule adds, updates, or otherwise changes the following titles of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank): 													
12.	The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the <i>Utah State Bulletin</i> . See Section 63-46a-5 and Rule R15-1 for more information.) A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy): 10/31/2008 B) A public hearing (optional) will be held: <table border="1"> <tr> <td>on (mm/dd/yyyy):</td><td>at (time):</td><td>At (place):</td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </table>		on (mm/dd/yyyy):	at (time):	At (place):									
on (mm/dd/yyyy):	at (time):	At (place):												
13.	This rule change may become effective on (mm/dd/yyyy):	11/07/2008												
	NOTE: The date above is the date on which this rule MAY become effective. It is <i>NOT</i> the effective date. After the date designated in Box 12(A) above, the agency <i>must</i> submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.													
14.	Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "NASA") or proper nouns (e.g., "Medicaid")):													

	licensing	security guards
	armored car security officers	armored car company
15.	Attach an RTF document containing the text of this rule change (filename):	R156-63b.cpr
<p>To the agency: Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i>, and delaying the first possible effective date.</p>		
<p style="text-align: center;">AGENCY AUTHORIZATION</p>		
Agency head or designee, and title:	F. David Stanley, Director	Date (mm/dd/yyyy): 09/10/2008

R156. Commerce, Occupational and Professional Licensing.

R156-63b. Security Personnel Licensing Act Armored Car Rule.

R156-63b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training program" means basic education and training that meets the standards set forth in Sections R156-63b-602 and R156-63b-603 that is approved by the Division.

(2) "Approved basic firearms education and training program" means basic firearms education and training that meets the standards set forth in Section R156-63b-604 that is approved by the Division.

(3) "Armored car company" includes a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed.

(4) "Armored car company" does not include a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible property, currency, valuables, jewelry, food stamps, or other high value items that require secured delivery from one place to another and are owned by or under the responsibility of that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(5) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(6) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement; or

(f) a conviction which has been reduced pursuant to Section 76-3-402.

(7) "Employee" means an individual providing services in the armored car[e] industry for compensation when the amount of compensation is based directly upon the armored car services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(8) "Officer" as used in Subsection 58-63-201(1)(a) means a manager, director, or administrator of an armored car company.

(9) "Qualified continuing education" means continuing education that meets the standards set forth in Subsection R156-63b-304.

(10) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of an armored car company who exercises material authority in the conduct of the armored car[e] company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(11) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or ~~[contract security]~~armored car company logo that clips onto~~[-to]~~ or is placed over the front pocket.

(12) "Supervised on-the-job training" means training of an armored car[e] security officer under the supervision of a licensed armored car security officer who has been assigned to train and develop the on-the-job trainee.

(13) "Supervision" means general supervision as defined in Section R156-1-102a(4)(c).

(13) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(1)(c), in Section R156-63b-502.

R156-63b-302e. Qualification for Licensure - Liability Insurance for a ~~[Contract Security]~~Armored Car Company.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the insurance requirements for licensure as an armored car company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established herein.

(1) An applicant shall file with the Division a "Certificate of Insurance" providing liability insurance for the following exposures:

- (a) general liability;
 - (b) assault and battery;
 - (c) personal injury;
 - (d) ~~[false arrest;~~
 - ~~——(e)——~~libel and slander;[
 - ~~——(f)——~~invasion of privacy;]
 - (~~[g]~~e) broad form property damage;
 - (~~[h]~~f) damage to property in the care, custody or control of the ~~[contract security]~~armored car company; and
 - (~~[i]~~g) errors and omissions.
- (2) Said insurance shall provide liability limits in

amounts not less than \$500,000 for each incident and not less than \$2,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All armored car companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the Division during normal working hours.

(5) All armored car companies shall notify the Division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63b-302g. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h) and (4)(c), the following is a list of criminal convictions which may disqualify a person from obtaining or holding an armored car[e] security officer license, or an armored car company license:

- (a) crimes against a person as defined in Title 76, Chapter 5, Part 1;
- (b) theft, including retail theft, as defined in Title 76;
- (c) larceny;
- (d) sex offenses as defined in Title 76, Part 4;
- (e) any offense involving controlled dangerous substances;
- (f) fraud;
- (g) extortion;
- (h) treason;
- (i) forgery;
- (j) arson;
- (k) kidnapping;
- (l) perjury;
- (m) conspiracy to commit any of the offenses listed herein;
- (n) hijacking;
- (o) burglary;
- (p) escape from jail, prison, or custody;
- (q) false or bogus checks;
- (r) terrorist activities;
- (s) desertion;
- (t) pornography;

(u) two or more convictions for driving under the influence of alcohol within the last three years; and

(v) any attempt to commit any of the above offenses.

(2) Where not automatically disqualified pursuant to Subsections 58-63-302(1)(h) and (4)(c), applications for licensure or renewal of licensure in which the applicant, or in the case of an armored car company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis as defined in Section R156-1-302.

R156-63b-304. Continuing Education for Armored Car Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armored car security officer.

(2) Armored car security officers shall complete 16 hours of continuing education every two years consisting of formal classroom education. Such education shall include:

- (a) company operational procedures manual;
- (b) applicable state laws and rules;
- (c) ethics; and
- (d) emergency techniques.

(3) In addition to the required 16 hours of continuing education, armored car security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63b-304(2). The continuing firearms education and training shall include as a minimum:

(a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and

(b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(4) Firearms education and training shall comply with the provisions of Title 15, USC Chapter [3]85, the Armored Car[e] Industry Reciprocity Act.

(5) An individual holding a current armored car security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the

licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.

(6) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

R156-63b-306. Change of Qualifying Agent.

Within 60 days after a qualifying agent for a licensed armored car company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the ~~[contract security]~~ armored car company shall file with the Division an application for change of qualifier on forms provided by the Division, accompanied by a fee established in accordance with Section 63J-1-303.

R156-63b-307. Exemptions from Licensure.

(1) In accordance with Subsection 58-1-307(1)(c), an applicant who has applied for licensure as an armored car security officer is exempt from licensure and may engage in practice as an armored car security officer in a supervised on-the-job training capacity, for a period of time not to exceed the earlier of 30 days or action by the Division upon the application.

(2) The Division may issue upon receipt of an application for licensure as an armored car security officer, an on-the-job training letter to the applicant, if the applicant meets the following criteria:

(a) the applicant has not been licensed as an armored car security officer, armed private security officer or unarmed private security officer in the state of Utah at least two years prior to applying for licensure;

(b) the applicant submits with his application an official criminal history report from the Bureau of Criminal Identification showing "No Criminal Record Found";

(c) the applicant has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(d) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation.

R156-63b-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that an armored car security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) employing an armored car security officer by an armored car company, as an on-the-job trainee pursuant to Section R156-63b-307, who has been convicted of:

(a) a felony;

(b) a misdemeanor crime of moral turpitude; or

(c) a crime that when considered with the duties and functions of an armored car security officer by the Division and the Board indicates that the best interests of the public are not served;

(3) employing an armored car security officer by an armored car company who fails to meet the requirements of Section R156-63b-307;

(4) utilizing a vehicle whose markings, lighting, and/or signal devices imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(5) utilizing a vehicle with an emergency lighting system which violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(6) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the armored car security officer is connected with a federal, state, or municipal law enforcement agency;

(7) being incompetent or negligent as an armored car security officer or by an armored car company that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(8) failing as an armored car company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees to the extent that the public health and safety are at risk;

(9) failing to immediately notify the Division of the cancellation of the armored car company's insurance policy;

(10) failing as an armored car company or an armored car security officer to report a criminal offense pursuant to Section R156-63b-61[3]2; and

(11) wearing an uniform, insignia, badge or displaying a license that would lead a reasonable person to believe that an individual is connected with an armored car company, when not employed as an armored car security officer by an armored car company.

R156-63b-503. Administrative Penalties.

(1) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

FIRST OFFENSE

		Armed or	
Unarmed			
		<u>Armored Car</u>	
Violation	[Contract Security]	<u>Armored Car</u>	Company
Security Officer			
58-63-501(1)	\$ 800.00		N/A
58-63-501(3)	\$ 800.00	\$ 500.00	

SECOND OFFENSE

58-63-501(1)	\$1,600.00	\$1,000.00
58-63-501(3)	\$1,600.00	\$1,000.00

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-63b-606. Operating Standards - Badges.

(1) At the armored car company's request, an armored car security officer may, while in uniform and while on duty, wear a shield inscribed with ~~[the name of the armored car company, a number and]~~ the words "Security," or "Security Officer". The

shield shall not contain the words "State of Utah" or the seal of the state of Utah.

(2) The use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63b-612. Operating Standards - ~~[Standards of Conduct]~~ Notification of Criminal Offense.

(1) Licensee employed by an armored car company:

(a) pursuant to Title 58, Chapter 63, a licensed armored car security officer arrested, charged, or indicted for a criminal offense above the level of a Class C misdemeanor shall notify the licensee's employing armored car company within 72 hours of the arrest, charge, or indictment;

(b) within 72 hours after such notification by the employee, the employing armored car company shall notify the Division of the arrest, charge or indictment in writing; and

(c) the written notification shall include the employee's name, the name of the arresting agency, the agency case number, the date and the nature of the criminal offense.

(2) Licensee not employed by an armored car company:

(a) pursuant to Title 58, Chapter 63, a licensed armored car security officer who is not employed by an armored car company shall directly notify the Division in writing within 72 hours of any arrest, charge or indictment above the level of a Class C misdemeanor; and

(b) the written notification shall meet the requirements of Subsection (1)(c).

KEY: licensing, security guards, armored car security officers, armored car company

Date of Enactment or Last Substantive Amendment: 2008

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-63-101